IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 606 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAMANLAL BECHARBHAI TAILOR

Versus

CHAMPAKLAL NANALAL MODI

Appearance:

MR JITENDRA M PATEL for Petitioner

MR SB VAKIL for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 18/03/98

ORAL JUDGEMENT

Being aggrieved by the judgment and decree dated 16th December, 1981, passed by the then learned Joint District Judge at Vadodara, in Regular Civil Appeal No.182 of 1980, dismissing the appeal, and confirming the judgment and decree dated 25th March, 1980, passed by the then Small Causes Court Judge at Vadodara in Regular Civil Suit No.2940 of 1978, directing the petitioner to hand over peaceful and vacant possession of the premises

let to him, and pay the sum of Rs.1,395/- the amount of rent due, and mesne profit at the rate of Rs.15/- per month, till possession is handed over etc.

2. Necessary facts in brief may be stated. There is a building bearing Municipal Census No.557/A situated in Nava Bazar Naka, Fatehpura area in Vadodara City. It is three storied building. The same belongs to the opponent. The first and second floors of that building (hereinafter referred to as `the suit premises') are let to the present petitioner at the monthly rent of Rs.15/-. Though the petitioner had to pay the amount of rent regularly he did not do so. He was found to be in arrears of rent from 1st June, 1972. The opponent knew that in Alkesh Society, the petitioner had acquired another suitable accommodation purchasing the building. He, therefore, on 6th May, 1975, gave notice and called upon the petitioner to pay the amount of rent that had become due and hand over peaceful and vacant possession of the suit premises. The petitioner paid no heed, on the contrary, he came out with the case that he was not at all in arrears of rent and had not acquired another suitable premises as alleged. With no option, therefore, the opponent filed Regular Civil Suit No.2940 of 1975 before the Small Causes Court at Vadodara on 16th June, 1975 and prayed for the decree of eviction on the grounds of non-payment of rent, and acquisition of suitable premises by the petitioner. The petitioner on being served with the summons appeared before the lower Court and filed his written statement at Exh.11, denying every allegation levelled against him. Necessary issues were then framed at Exh.13 on 15th July, 1976. Appreciating the evidence before him, the then learned Small Causes Court Judge reached the conclusion that the opponent had establish the case he had pleaded in the plaint. He therefore, passed the decree of eviction on 25th March, 1980. Being aggrieved by the judgment and decree passed by the trial court, the petitioner preferred an appeal being Regular Civil Appeal No.182 of 1980 in the District Court at Vadodara. The same was assigned to the then learned Joint District Judge at Vadodara, who hearing the parties on merits dismissed the appeal on 16th December, 1981. The petitioner who also failed before the Appellate Court has preferred this Revision Application, challenging the legality and validity of the judgments and decrees passed by both the Courts below.

3. The learned advocate representing the petitioner has confined to the only point, tapering off his submissions, namely acquisition of suitable premises. It may be stated, at this stage, what is the case of the

opponent. According to him, prior to the date of the suit, the petitioner enrolled his name as the member of Alkesh Co-operative Housing Society (for short `Alkesh Society') and got booked a Bungalow No.20-B. The Alkesh Society was to construct several bungalows for those who had become its members. After the construction was over, the society put its members into the possession of their respective bungalows. The petitioner was put in the possession of the Bungalow No.20-B, at any time prior to October, 1974, but to frustrate his claim, the petitioner shrewdly sold out the said bungalow No.20-B to Shri Jaynarayan Vidyashanker Dave. In the records of the Alkesh Society, necessary changes were made passing the Resolution No.3(1) on 3rd October, 1974. Thereafter, during the pendency of the suit on 17th November, 1976, the petitioner purchased another four storied house bearing Survey No.228/1, situated in Asrafkhan Dahela on the road between Champaner Gate to Nani Chhipwad in Vadodara City. That house in Nani Chhipwad is one and half time bigger than the suit premises and in all respects suitable to the petitioner. Under Section 13(1)(l) of the Bombay Rent, Hotels & Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Bombay Rent Act"), he is entitled to the decree of eviction. In view of such case advanced, which has found favour with both the courts below, the petitioner has come out with the case that he had merely enrolled himself as the member of Alkesh Society, but, unfortunately later on he could not make the payment he had to, by instalments, for want of necessary fund, and therefore, he got his booking cancelled. Consequently, the Society had passed the resolution allotting the bungalow, which was under construction, to Shri Jaynarayan Vidyashanker Dave. He never got the possession of the bungalow and never occupied the same. Before the construction thereof was over he had got the booking cancelled. Thus, he had not acquired the premises as alleged. No doubt, after the suit was filed, he on 17th November, 1976, purchased the house in Nani Chhipwad, but when the house was purchased subsequent to the date of the suit, the ground of acquisition of the suitable premises available under Section 13 (1) (l) of the Bombay Rent Act, for seeking the decree of eviction was not available to the respondent. The learned advocate representing the petitioner then drew my attention to a decision of this court rendered in the case of Shivlal Nathuram Vaishnav V. Harshadrai Haribhai Oza, 21 (1980) G.L.R. 99, wherein, it is held that, whenever the landlord filed the suit for possession of the premises let on the ground that the tenant has acquired another suitable premises, the cause of action must exist at the time of notice and

also at the time of filing of the suit. If the tenant, thereafter disposes of the acquired premises, or any other way transfers the same during the pendency of the suit, the tenant cannot get the protection of the Bombay Rent Act. What is sought to be canvassed is that when the suit was filed on 16th June, 1975, the petitioner had not acquired any premises, and therefore, there was no cause of action to continue with the suit or to file the suit, and the suit on that ground was liable to be dismissed. This Revision is also, therefore, on that ground is required to be allowed and the decrees passed by both the Courts below are required to be set aside.

4. Reading Section 13(1)(l) of the Bombay Rent Act, alongwith the decision of Shivlal Nathuram (Supra), what can be deduced is that after coming into operation of the Bombay Rent Act, if the tenant has built up or acquired vacant possession of or being allotted with suitable residence, he loses the protection and the landlord acquires a right to have the decree of eviction. What is to be borne in mind is that the acquisition must be on the date of notice and also on the date of the suit, and not subsequent to the date of the suit. At any time, therefore, on or before the date of the suit, if the tenant builts the house or acquires the possession of the house or is allotted with the suitable residence, he loses the protection, regardless of the fact whether thereafter he continues to be the owner and in possession of the suit premises or transfers the same, because once the wrong is done, cannot be undone by transferring the premises, or disposing the same of in any manner whatsoever.

5. Whether in this case, the petitioner has acquired the suitable residence is the point in controversy. Before I proceed to dissect the merits of the rival cases, it should be noted that the words "been allotted a suitable residence" appearing in Section 13(1)(l) are material. Shri Jaynarayan V. Dave is examined at Exh.58 by the opponent. He has in his evidence made it clear that he purchased the Bungalow No.20-B in Alkesh Society from the petitioner. Formerly that bungalow was in the name of the petitioner. In January, 1974, the petitioner sold that bungalow to him and put him into the possession of that bungalow. Such evidence in clear terms supports the case of the opponent, that prior to the date of the suit, the petitioner acquired another suitable premises. His evidence also reveals that formerly the petitioner had acquired the possession and thereafter while selling the house he put Jaynarayan Vidhyashanker Dave into the possession of the bungalow. The copy of the resolution

passed by the Alkesh Society is produced at Exh.60, wherein, it is also mentioned that the petitioner had sold the bungalow No.20-B to Jaynarayan Vidhyashanker Dave, and therefore, necessary changes were resolved to be made in the Society's record. It is made clear in this resolution that the petitioner had sold his bungalow No.20-B to Jaynarayan Vidhyashanker Dave, and therefore, necessary changes were resolved to be made in the Soceity's record. It is not made clear in this resolution that the petitioner had simply got his name enrolled as the member and when he failed to make the payment by instalments, before the bungalow could be allotted making it ready for possession and the petitioner could be put into the possession thereof, the same came to be transferred i.e. sold to Jaynarayan Vidhyashanker Dave, on the contrary, the resolution shows that the petitioner had sold his bungalow No.20-B to Shri Jaynarayan Vidhyashanker Dave which is indicative of the fact that petitioner was put into possession of the bungalow No.20-B. This fact on record in clear terms establishes that the petitioner acquired another suitable premises as alleged, and discredits the truth of the case in defence.

6. Whether the bungalow acquired in Alkesh Society was suitable to the petitioner is the next question that arises for consideration. There is nothing on record going to show that the premises in Alkesh Society were not suitable. What the petitioner says is that he could not manage for the fund. He has not come out with the case that it was not suitable. It may, however, be mentioned that whether the premises acquired by the tenant are suitable or not has to be established by the tenant because he will be the best person to say on the point for everything will be within his knowledge. Suffice it would be for the landlord to show that the tenant has acquired the vacant possession of the premises or has built his house. If the tenant proves that the premises acquired are not suitable, it would then for the landlord to show how the same are suitable. It should also be mentioned that ordinarily the person having hard money with him would not like to invest the amount haphazardly or in a slapdash manner and purchase the building or a house not suitable to him. Ordinarily, the assumption would be that the person would invest the amount only if the house is suitable to him. If he has to compromise for want of necessary fund or certain facility or amenities or owing to some circumstances, it is his selection and his selection should be presumed to be suitable. It may at this stage be mentioned that the Apex Court has also taken likewise view in Ganpat Ram

Sharma v.. Gayatri Devi A.I.R. 1987 S.C. 2016 while dealing with the question namely acquisition of alternative accommodation by the tenant, and landlord's right to get possession under sec.14(1)(h) of the Delhi Rent Control Act, which can safely be made applicable mutatis mutandis to the present case. I may quote the relevant portion thereof which is in the following terms :-

> ".....that the landlord in order to be entitled to evict the tenant under S. 14(1)(h) must establish one of the alternative facts positively either that the tenant has built or acquired vacant possession of or has been allotted a residence. It is essential that the ingredients must be pleaded by the landlord who seeks eviction but after the landlord has proved or stated that the tenant has built, acquired vacant possession or has been allotted a residence, whether it is suitable or not, and whether the same can be really an alternative accommodation for the tenant or not, are within the special knowledge of the tenant and he must prove and establish those facts."

In this case when no evidence about the bungalow No.20-B is led by the petitioner, it must be assumed that he had acquired the bungalow because it was suitable to him. In the case on hand, action at the earliest is taken leaving no scope for the application of the principle of delay, latches and acquiescence. Consequently, both the Courts below were justified in holding that the petitioner had acquired the suitable premises at any time prior to the date of the suit, and disposed the same of before the date of the suit.

7. About subsistence of cause of action on the date of the suit it may be stated that after such acquisition at any time before the date of the suit, the tenant transfers the house, the cause of action that arises because of acquisition of the vacant possession of the premises must be deemed to be existing, because as stated above once the wrong is done and cause of action arises, it cannot be made undone by even selling out the house or in any other way transferring the same. In view of the fact on the date of the suit, and notice as well, in this case, cause of action must be deemed to be existing or continuing & subsisting. The decision in Shivlal Nathuram (supra), thus helps the opponent, rather than the petitioner. The petitioner therefore can be said to have acquired vacant possession of another suitable premises, giving rise to a right in favour of the

opponent landlord to pray for a decree of eviction and have the same.

8. It may be mentioned that formerly in such suits the cause of action was considered to be the termination of tenancy, as made clear by the High Court of Bombay in Zainab Bai, wife of Hussainbhai Ebrahim and others vs. Navayug Chitrapat Co.Ltd. - AIR 1969 Bombay 194; but after the Supreme Court made the law clear in V. Dhanpal Chettiar vs. Yesodai Ammal - AIR 1979 SC 1745, cause of action will not now be the termination of tenancy. As the law made clear by the Supreme Court, notice terminating the tenancy as per Sec. 106 of Transfer of Property Act is not required to be given because the tenant is protected by the Rent Legislations of different States. When in law, notice terminating the tenancy is not required to be given, the cause of action in such suits arises from the day when the incident, attracting any of the grounds available to the landlord to seek decree of eviction against the tenant in the Bombay Rent Act, and forfeiting tenants' right to be in possession, occurs. Such position of law emerging because of the law made clear in V. Dhanpal's (Supra) is also clarified by the Supreme Court in the case of Smt. Shakuntala S. Tiwari vs. Hem Chand M. Singhania - AIR 1987 S.C. 1823 holding that because of the Rent Acts in different States, the tenancy is not required to be terminated giving the notice, and hence the termination of the tenancy would not provide the cause of action, but the grounds provided in the Bombay Rent Act or the concerned Rent Act would provide the cause of action, because the landlord would be entitled to the decree of eviction, not by termination of the tenancy, but by any of the grounds in the Rent Act is available to him, or the tenants commits the breach of any of the provisions of the Rent Act applicable. Likewise view is also taken by the Apex Court in another case of Ganpat Ram Sharma (Supra), while dealing with the question of limitation.

9. In short, prior to the decision of the Supreme Court in V. Dhanapal Chettiar (Supra), in such cases the position of the law was that the landlord who filed the suit to recover possession of the leasehold premises terminating the tenancy on one or the another ground available in the Rent Act, was free to get the plaint amended and add any other ground taking into account the subsequent event that occurred after the date of the suit because in that case termination of the tenancy was considered to be the cause of action and not the ground available in the Rent Act for seeking the decree of eviction. After 1979, when Supreme Court held that the

notice terminating the tenancy is not required, every ground now provides separate cause of action.

10. In this case, before the Supreme Court pronounced the above referred judgment on 23rd August, 1979, in the case of V. Dhanpal (Supra) as per then position of law, amendment application Exh.15 was filed before the trial Court on 26th September, 1977, because from 17th November, 1976, the petitioner had acquired another premises and the ground of acquisition of the vacant possession of the another premises was required to be added in the plaint. The amendment was allowed hearing the parties, and the same was also carried out. Both the parties then led necessary evidence and sought decisions accepting the amendment allowed. Both the lower Courts then appreciated the evidence in the suit as stated above. When as per the then position of law, any other ground was permitted to be added and parties then led the evidence on the ground added, it will not be open to the petitioner to contend that a different cause of action arose when he purchased the house on 17th November, 1976, and therefore, a fresh suit was required to be filed. In those days, at the cost of repetition, I may say that termination of tenancy being the cause of action, any other ground for seeking the decree of eviction was permitted to be added during the pendency of the suit as the ground was not constituting the cause of action. It is, therefore, not open to the petitioner to argue that if subsequently that ground is added, it would amount to changing the cause of action. In short, what is required to be emphasized is that when parties accepting the amendment that was allowed led the evidence and also sought the decision on the ground added as per the then law prevailing, it is not open to the petitioner now to contend that another suit was required to be filed by the opponent and decree on the ground of acquisition of another suitable premises ought not to have been passed. The decision in V. Dhanpal's case will in such facts and circumstances be of no help favourable to the petitioner.

11. For the aforesaid reasons, there is no justifiable reason to interfere with the judgments and decrees passed by both the Courts below. Neither of the Courts has fallen into the error of law. The judgments and decrees passed by them being quite in consonance with law are required to be maintained. The Revisions is devoid of merits. The same is liable to be dismissed with costs. In the result, the Revision Application is hereby dismissed with costs.

12. At this stage, Mr. Patel, the learned advocate

representing the petitioner, requests to grant some time to the petitioner to vacate the suit premises and hand over the possession to the opponent. The process of vacating the house will consume few months, and therefore, reasonable time to the petitioner is required to be granted so that he can conveniently shift his belongings to his new residence. Hence, time to vacate the suit premises is granted upto 30-09-1998 on conditions that within a period of one month from today, the petitioner shall file usual undertaking before this court, failing which, time granted shall be deemed to have been withheld, and in that case it would be open to the opponent to execute the decree in accordance with law. Rule discharged.

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